IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE SRI JUSTICE BILAL NAZKI

and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.3920 of 2006

Between:

Akula Vyjayanthimala.

..... PETITIONER

AND

1.The State Government of A.P.,

rep. by Chief Secretary to Government,

Secretariat, Hyderabad, and another.

.....RESPONDENTS

ORDER: ***(Per Hon'ble Sri Justice Bilal Nazki,)***

Heard learned Counsel for the parties.

The detention of Akula Vijay has been challenged in this Writ Petition by the mother of the detenu. The order of detention has been passed by the second respondent-Collector and District Magistrate on 09-02-2006 in terms of Section 3(2) r/w Section 3(1) of A.P.Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (herein after referred to as 'the Act'). The grounds of detention reveal that five cases were registered under the A.P.Prohibition Act against the detenu from 13-08-2003 to 16-11-2005. In the order of detention, the Collector and District Magistrate, Warangal District stated as under:

> 'Whereas the connected records pertaining to the cases detected against you show that you have managed to obtain bail in two/three days, taking advantage of bailable provisions under Prohibition Law and continuing to indulge in your illegal activities adversely affecting public life. Thus, the cases filed against you under the provisions of departmental laws are unable to curb your illegal clandestine and dangerous activities, which are prejudicial to the maintenance of Public order.'

Though many grounds of attack have been pressed into service by the learned Counsel for the petitioner, but we feel that the Writ Petition can be disposed of on one of the grounds of attack. It is submitted that the second respondent-District Magistrate was not aware of the fact that the detenu was in detention, on the day the order of detention was passed.

The paragraph, which we have quoted from the order of detention, reveals that the detaining authority was under the

impression that the detenu was on bail. He was also under a wrong impression that the offences under the Prohibition Law are bailable whereas all offences under the Prohibition Law are non-bailable. In Para 6 of the counter-affidavit, it is stated as under:

> 'It is submitted that while the detenu was in judicial custody at Central Prison, Warangal in connection with C.O.R.No.1156/2006, dated 08-02-2006 u/s 7(A) r/w 8(e) of A.P.Prohibition Act, 1995 of Prohibition & Excise Station, Hanamkonda in which he caught in possession of 20 ltrs of I.D.liquor, the order of detention, grounds of detention and material relied upon were served on him on
> 9-2-2006 and the detenu has acknowledged the same. It is also relevant to state that the grounds of detention and order of detention were also served on the mother of the detenu on the same day. It is submitted that the detenu was duly informed that he has a right to make representation to the Detaining Authority, to the Government and to the Advisory Board. Thus the constitutional and statutory mandate has been complied with. It is submitted that Government issued G.O.Rt.No.852, General Administration (L & O.II) Department, dated 18-02-2006 approving the order of detention. It is submitted that the orders passed against the detenu were placed before the Advisory Board in its meeting held on 8-3-2006 opined that there are sufficient grounds for passing the order of detention against the detenu and the matter is pending with the Government.'

This clearly shows that when the second respondent-Collector and District Magistrate passed the order of detention, he was not aware that the detenu was already in custody. Had he been aware of such a fact, he would have given reason for passing the order of detention in spite of the fact that the detenu was already in custody. Such questions have been considered in various judgments of the Supreme

Court and one of the judgments is ***Ahmad Nassar vs. State of Tamilnadu.*** In the said judgment, it was held that non-placement of relevant material before detaining authority and non-consideration of such material would vitiate the order of detention.

For this ground alone, the Writ Petition is allowed. The order of detention in Rc.No.1968/2005/P&E/A4-1, dated 09-02-2006 is quashed. The detenu *viz*., Sri Akula Vijay shall be released forthwith, if not needed in any other case.

(Bilal Nazki, J)

23rd March, 2006

(G.Chandraiah, J)

LUR